

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIFTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 16670 of 1995

Between:

Mantri Jaya Jaya Ramarao, S/o Krishnaiah,
60 years, ex-employee, r/o Ongole, Prakasam District.

..... PETITIONER

AND

1. The Deputy Registrar of Co-Operative Societies,
Narasaraopet, Guntur District.
2. The Court of Munsif-Magistrate-cum-Co-Operative
Tribunal, Vinukonda, Guntur District.
3. Nagarjuna Sagar Project Employees' Co-Operative
Credit Society Limited, Vinukonda, Guntur District, A.P.

(The C.T. is amended with regard to R-3 in Court with permission on 28.9.1995)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction, particularly a writ in the nature of Mandamus declaring the order Rc.No.717/81-B dated 01.05.1985 of the 1st respondent, as confirmed by the judgment dated 07.07.1995 in C.M.A.No.1 of 1988 on the file of the 2nd respondent as illegal, void and unjust.

Counsel for the Petitioner: MR.V.PARABRAHMA SASTRI

Counsel for the Respondent No.1: GP FOR COOPERATION

Counsel for the Respondent No.2: NONE APPEARED

Counsel for the Respondent No.3: MR.VENKATESWARLU POOSANI

The Court made the following:

ORDER:

-

This Writ Petition is filed seeking Writ of Mandamus, to declare the order dated 1-5-1985 passed in Proceedings Rc.No. 717/81-B, on the file of the first respondent and the order of the appellate authority dated 7-7-1995 passed in CMA.No. 1 of 1988, as illegal and arbitrary.

The petitioner was the secretary of the Nagarjuna Sagar Project Employees' Cooperative Credit Society Limited, Vinukonda. He was retired from service in the year 1993. An enquiry was conducted into the affairs of the said Society as contemplated under Section 51 of the A.P. Cooperative Societies Act, 1964. In the said proceedings, the Extension Officer (Cooperative Societies & Panchayat Samithi), Vinukonda, submitted a report to the effect that an amount of Rs. 11,203.40Ps was misappropriated by the petitioner from the society funds. Basing on the said enquiry report, proceedings were initiated for surcharge under Section 60 of the A.P. Cooperative Societies Act, 1964. On the ground, that in spite of giving number of opportunities, the petitioner failed to submit explanation, the primary

authority has passed the impugned order dated 1-5-1985 for recovery of the amount of Rs.11,203.40Ps with interest at 18% per annum from the petitioner. Even the appellate authority confirmed the said order, by order dated 7-7-1995 passed in CMA.No. 1 of 1988.

From a reading of the impugned order passed by the primary authority, it is clear that no independent enquiry as contemplated under Section 60 of the A.P. Cooperative Societies Act, 1964 was conducted and no findings are recorded to recover the said amount from the petitioner. The impugned order for recovery is passed by the primary authority only on the ground that the petitioner has not filed any explanation to the show cause notice.

Section 51 of the A.P. Cooperative Societies Act, 1964 contemplates enquiry into the affairs of the society. At that stage, no opportunity was provided to the petitioner. The enquiry report prepared under Section 51 of the A.P. Cooperative Societies Act, 1964 can be the basis for initiation of proceedings under Section 60 of the A.P. Cooperative Societies Act, 1964. But, unless an independent enquiry is conducted by recording findings, no order of surcharge can be passed.

In this case, from a perusal of the order passed by the primary authority, it is clear that no independent enquiry was conducted under section 60 of the A.P. Cooperative Societies Act, 1964, so as to surcharge the petitioner for recovery of the alleged misappropriated amount. Further, inasmuch as the impugned order was passed before the petitioner has submitted his explanation, I consider it, evidently a fit case to give opportunity to the petitioner, to put-forth his explanation before the competent authority.

In that view of the matter, the order of surcharge dated 1-5-1985 passed in Proceedings Rc.No. 717/81-B, on the file of the first respondent and the order of the appellate authority dated 7-7-1995 passed in CMA.No. 1 of 1988 are set aside. The petitioner is permitted to file his explanation before the primary authority within a period of three weeks from the date of receipt of this order and on filing such

explanation, it is open for the primary authority to conduct enquiry as contemplated under Section 60 of the A.P. Cooperative Societies Act, 1964 and to pass appropriate orders. If any amount is paid by the petitioner pursuant to the surcharge order dated 1-5-1985 or during the pendency of the appeal before the appellate authority, the same shall be subject to the final orders to be passed by the first respondent-primary authority.

The Writ Petition is allowed to the extent indicated. No order as to costs.

-

-

JUSTICE R. SUBHASH REDDY

DATED: 25-01-2005

DR/Msnr.

That Rule nisi has been made absolute.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this the Tuesday, the twenty fifth day of January, Two thousand and five.

To

1. The Deputy Registrar of Co-Operative Societies,
Narasaraopet, Guntur District.

2. The Court of Munsif-Magistrate-cum-Co-Operative
Tribunal, Vinukonda, Guntur District.

3. Nagarjuna Sagar Project Employees' Co-Operative
Credit Society Limited, Vinukonda, Guntur District, A.P.

4 2CCs to Government Pleader for Co-Operation, High
Court Buildings, Hyderabad. (OUT)

5 2CD copies